HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.420 of 2007

Between:

The Fishermen Cooperative Society,
Kajuluru, East Godavari District.

… Appellant

AND

V.Suryanarayana & Another.

… Respondents

; JUDGMENT :

Counsel for the appellant : Shri P.Satyanarayana

Dated: 25th June, 2007

Per C.V.NAGARJUNA REDDY, J.

This writ appeal is filed against the order dated 13.4.2007 of the learned Single Judge in Writ Petition No.7334 of 2007 whereby he dismissed the writ petition filed by the appellant.

While respondent No.1 was in military service, he applied for assignment of land in survey No.169 admeasuring Ac.5.30 cents of Dugguduru village of erstwhile Kakinada taluk which is presently in Kajuluru mandal. When a part of the said land was proposed to be assigned to respondent No.1, the appellant society filed a suit O.S.No.105 of 1970 in the Court of Subordinate Judge, Kakinada. The said suit was dismissed as withdrawn on 28.2.1975. Tahsildar vide his proceedings ROC B5-1199/77 dated 27.7.1977 initially leased out an extent of Ac.2.50 cents in survey No.169 to respondent No.1 and later the said land was assigned to him vide Tehsildar proceedings R.Dis.1199/77 dated 16.3.1978. The appellant filed a revision petition before Commissioner of Land Revenue, Hyderabad, questioning the said assignment made in favour of respondent no.1. The said revision petition was dismissed by the Commissioner of Land Revenue in his order C.P.Rt.No.1721/82 dated 27.7.1982. Appellant filed Writ Petition No.6983 of 1982 against the said order of the Commissioner of Land Revenue. The said writ petition was disposed of by this Court giving liberty to the petitioner to file revision before the Government. Accordingly the appellant filed revision petition which was disposed of by the Government vide Memo No.2101/Asn.I(2)/87-13, dated 3.12.1998 whereby the Government remanded the matter to the District Collector, East Godavari for deciding the same afresh. The 1st

respondent filed Writ Petition No.25899 of 1999 against the said order of remand passed by the Government. This Court by an order dated 26.9.2005 disposed of the said writ petition with a direction to the District Collector, East Godavari district to submit a status report/remarks to the Government and the latter was directed to pass appropriate orders on the revision petition of the appellant. Thereafter, the Special Chief Secretary to the Government, Revenue Department passed orders on 16.3.2007 whereby he rejected the revision petition filed by the appellant.

Feeling aggrieved by the said order of the Special Chief Secretary to the Government, Revenue Department, the appellant filed Writ Petition No.7334 of 2007 which was dismissed by the learned Single Judge.

Heard Sri P.Satyanarayana, learned counsel for the appellant and perused the record.

The learned counsel for the appellant argued that the order of respondent No.2 is not a speaking order and that therefore, the learned Single Judge ought to have set aside the said order and allowed the writ petition. The learned counsel also submitted that the property which was assigned to respondent No.1 is a water body and classified as such in the revenue records and that therefore, assignment of a water body which is prohibited under the Board Standing Orders was wholly illegal. The learned counsel further contended that the appellant being a Fishermen Cooperative Society will be benefited by putting the disputed property to use by carrying on fishing operations and that respondent No.2 committed serious error in rejecting the revision petition of the appellant and confirming the assignment granted in favour of respondent No.

In support of the contention of the appellant that the disputed

property is a water body, the learned counsel for the appellant after taking adjournment filed a copy of the counter affidavit filed by the Collector, East Godavari District, Kakinada in Writ Petition No.25899 of 1999. A perusal of the said counter affidavit gives the entire background of the dispute. It is clear from the averments in the said counter affidavit that an extent of Ac.5.30 cents of land in survey No.169 of Dugguduru village of erstwhile Kakinada taluk and presently Kajuluru Mandal is registered as “Atreya Godavari Poramboke” in the village accounts. Respondent No.1 applied for assignment of the said land. There upon survey No.169 was subdivided into survey No.169/1 and 169/2. The District Collector in his proceedings dated 17.9.1970 converted survey No.169/2 admeasuring Ac.2.50 cents as assigned waste (dry). Anticipating grant of assignment in favour of respondent No.1, the appellant filed a civil suit registered as O.S.No.105 of 1970 in the Court of Subordinate Judge, Kakinada and the said suit was dismissed as withdrawn on 28.2.1975. The appellant society approached respondent No.2 with a representation that it has been in possession of the property and acquired Sivoijama rights and that therefore it was not proper to dispossess them in order to assign the land to respondent No.1. Considering the representation of the appellant, the Government issued a memo dated 23.10.1976 whereby the District Collector was directed to select an alternative land. Following the said direction Tahsildar, Kakinada selected an extent of Ac.2.50 cents of land in survey No.161 and initially leased out the said land in favour of respondent No.1. On coming to know about the said lease the appellant informed the Tahsildar that the land which was leased to respondent No.1 was leased out to the appellant society by the Executive Engineer, PWD, Douleshwaram for 5 Faslis from 1385 Fasli to 1389 Fasli. Subsequently, the Tahsildar submitted a report to

the District Collector inter alia stating that the total extent in survey No.161 of Duggudur village admeasuring Ac.10.00 is under the occupation of the appellant society and he recommended for cancellation of lease in respect of part of the land for the purpose of giving assignment to respondent No.1. After considering the said proposal the district administration felt that it was not possible to cancel the lease in favour of the appellant and as an alternative he directed the Tahsildar to select a suitable alternative land to respondent No.1. Since there was no alternative land available in the vicinity, a part of Survey No.169 admeasuring Ac.2.50 cents was proposed to be assigned to respondent No.1 and accordingly the appellant society was evicted from Ac.2.50 cents of land in survey No.169 by invoking the provisions of Land Encroachment Act 1905. As mentioned hereinabove initially the said land was leased out to respondent No.1 on 27.7.1977 and the same was assigned to him on 16.3.1978.

From the facts mentioned above the appellant has been litigating raising objections against the assignment of land to respondent No.1 right from the inception. When the revenue authorities sought to provide respondent No.1 with an alternative land in survey No.161, heeding to the objections of the appellant raised against the assignment of the land in survey No.169 it has objected to the said alternative proposal too claiming that it holds leasehold rights of the land in Survey No.161. As there was no alternative land available in the area, survey No.169 was subdivided and a part of it was given to respondent No.1. It is evident from the averments contained in the counter affidavit in Writ Petition No.25899 of 1999, the appellant was dispossessed from Ac.2.50 cents of land in Survey No.169 and presumably the appellant continues to be in possession of balance of

Ac.2.80 cents of land in the said survey number, in addition to its being in possession of Ac.10.00 of land in survey No.161 under a lease given to it by the Irrigation Department. The contention of the learned counsel for the appellant that since the property assigned to respondent No.1 was a water body as it is registered as “Atreya Godavari Poramboke” the assignment is illegal, in our considered view is pressed into service only to deny respondent No.1 the benefit of assignment and hence lacks bona fides. It is not as if the appellant has been questioning the assignment of respondent No.1 in general public interest for the protection of water body. Its objection to the assignment in favour of respondent No.1 is adversarial in nature. The sole intention behind the appellant’s continued attempts to get the assignment made in favour of respondent No.1 cancelled is to enjoy the land itself. Therefore, the assignment made in favour of respondent No.1 cannot be invalidated on this purported ground. Even otherwise we see no merit in the contention of the learned counsel for the appellant that the land which is assigned to respondent No.1 is prohibited from assignment. From the aforementioned counter affidavit of the District Collector filed in Writ Petition No.25899 of 1999 it is evident that the property was registered as “Atreya Godavari Poramboke” in village accounts. The appellant did not produce any material to explain the true nature of the said property and whether the description mentioned in the village accounts is referable to a water body. The appellant did not produce any material to show that there is a water body in existence in the said survey number. The District Collector stated in the said counter affidavit that the nature of the land was converted as assessed waste (dry) as far back as 17.9.1970. It is therefore clear that from 17.9.1970 the land is classified as assessed waste (dry) and it cannot be treated as the river course or a water

body. The learned Single Judge, relying upon the judgment in **Susetha Vs. State of Tamil Nadu**[1] held that if a water body is in disuse and not being put to use as such can always be used for other purposes. He also held that in the absence of any material showing that there is existence of water body, the appellant's contention was not sustainable.

With regard to the contention of the learned counsel that the order of respondent No.2 does not contain reasons, it is no doubt true that elaborate reasons are not given by respondent No.2 in confirming the assignment made in favour of respondent No.1. However after going through the entire record carefully we are satisfied that the assignment made in favour of respondent No.1 does not suffer from any illegality. Therefore, we are not inclined to set aside the order of respondent No.2 merely on account of the fact that it did not contain elaborate reasons. The Judgments in **Katuru Mahalaxmamma Vs. Special Commissioner of Land Revenue, A.P., Hyderabad and Others**[2] and **Mrs.Susetha Vs. State of Tamil Nadu & Others**[3] cited by the learned counsel for the appellant have no relevance to the facts of this case. The learned counsel for the appellant has not argued any other point.

For the reasons aforementioned, the writ appeal fails and is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 25-06-2007.
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[1] (2006) 6 SCC 543

[2] 2002 Suppl.(1) ALD 273 (DB)

[3] AIR 2006 SC 2893